

6.3.7 Rebates and Financial Guarantees

6.3.7.1 Overview and Expectations

The Plan seeks a Vendor that will offer strong Financial Guarantees that bring value and certainty to the Plan. During the course of the Contract, Vendor will work with the Plan to ensure that it has favorable pricing relative to the marketplace. This includes cooperating with Market Checks and renegotiating terms as appropriate as specifically set forth below.

6.3.7.2 Financial Requirements:

1. Vendor shall, and shall cause each group purchasing organization, aggregator, or other third party which receives Rebates from pharmaceutical manufacturers on behalf of, or with respect to claims for drug utilization submitted by Vendor, to contract in a manner that permits, at the Plan's discretion, for all Rebates received by each such group purchasing organization, aggregator or third party to be payable to Vendor and 100% passed-through to the Plan.
2. Vendor shall:
 - a. Pay 100% of Rebates to the Plan regardless of drug status or classification (Single Source brand, Multi-Source brand, Generic, OTC, devices, etc.) of the product on which they were earned and including any Rebate amounts not invoiced or calculated as a percentage of wholesale acquisition cost (WAC) for a specific product;
 - b. Not enter into any agreement that would reduce the value of Rebates to the Plan in exchange for purchase Discounts or any other thing of value;
 - c. Allow the Plan, or designated third-party, to conduct annual market assessments, otherwise known as Market Checks, prior to and during the Contract term to determine the continued competitiveness of administrative service fees, pricing terms, financial guarantees, and Rebate contracts to ensure that the Plan is receiving best-in-class pricing, taking into account factors such as plan size, utilization patterns, population mix, plan design, and service scope. If the Plan determines that pricing is less favorable than what is available in the competitive market, Vendor shall adjust the Plan's pricing to maintain best-in-class guarantees within ninety (90) days of the completion of the annual Market Check, retroactive to the beginning of the Contract year. Such adjustments may include, but are not limited to: (a) matching pricing terms offered to comparable clients in Vendor's book of business; or (b) providing pricing based on actual cost of goods (e.g., acquisition cost plus a fixed fee), if such terms are more favorable than current rates;
 - d. Provide comments on the Market Check analysis within ten (10) State Business Days of receipt of the Market Check Report from the Plan or its designee;
 - e. Support the Plan's ability to conduct a Market Check as outlined in Section 6.3.7.2.2.c. above and will agree to amend the Contract as needed to implement new pricing terms;
 - f. Agree that financial guarantees, including minimum rebate guarantees, are binding, and may not be modified without an amendment to the Contract and that adjustments to minimum rebate guarantees will only be considered in the event of a Qualifying Plan Action or Qualifying Market Event that results in a Significant Rebate Impact, as determined by the Plan, through the Equitable Adjustment request process described below;
 - g. Comply with all requirements for requesting and providing documentation and financial modeling for Equitable Adjustments as defined in this RFP. Such requirements for each Request include:
 - 1) A clear and detailed explanation of how the Qualifying Plan Action(s) or Qualifying Market Event is/are expected to result in a change to Rebates meeting the definition of a Significant Rebate Impact;
 - 2) An updated annual projection of expected WAC on Brand Drug Paid Claims and amount of invoiced Rebates in total;
 - 3) All information needed to reasonably substantiate items (a) and (b) above, including any assumptions underlying projections and estimates with detail specified at the NDC-level where feasible, or grouped by

active ingredient, strength, and dosage form if NDC-level data is impractical;

- 4) If applicable, all information needed to reasonably substantiate that the Qualifying Market Event or Qualifying Plan Action deviates materially from projections and assumptions specified by Vendor and provided as part of Vendor's submission to this RFP; and
 - 5) Any request for Equitable Adjustment must be submitted within thirty (30) days of the initiation of a Qualifying Plan Action or Qualifying Market Event or the Request shall be untimely and not considered by the Plan.
- h. The Plan may request additional supporting information related to any request for an Equitable Adjustment, which Vendor shall provide within fourteen (14) days. The Plan shall reasonably determine any Equitable Adjustment and notify Vendor of the adjustment amount. The Equitable Adjustment will be set at a level to account for the expected Significant Rebate Impact from the Qualifying Plan Action(s) or Qualifying Market Event, as reasonably determined by the Plan, subject to verification and adjustment prior to the annual rebate guarantee reconciliation process;
 - i. The Plan shall review and recalculate each Equitable Adjustment based on actual experience for the Contract year and modify any Equitable Adjustments as necessary based upon that review. Any amounts owed to the Plan based on these modifications shall be paid without unreasonable delay. The Plan and Vendor shall execute an amendment to modify the rebate guarantees accordingly. These modified Equitable Adjustments to the rebate guarantees shall be used for the annual Rebate reconciliation;
 - j. Only market events that a) deviate from pipeline assumptions provided as part of Vendor's proposal for Module 2, and b) directly result in a Significant Rebate Impact as a result of such deviation, shall meet the criteria of a Qualifying Market Event and therefore be eligible for consideration for an Equitable Adjustment to rebate guarantees;
 - k. Vendor shall provide a detailed report outlining pipeline assumptions and forecasts of top Brand Drug patent expirations and assumptions, as well as all expected impacts of anticipated law and regulation changes.
 - l. Vendor will provide any forecast concerns in a quarterly pipeline report and will meet with the Plan quarterly to discuss
 - m. Vendor shall comply with all audit requirements relating to any Equitable Adjustments.